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Title: METHOD FOR DIRECTING AND EXECUTING CERTIFIED TRADING INTERESTS				
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APPEAL BRIEF (PURSUANT TO 37 CFR 41.37)

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Table of Contents

Page

3	Real Party in Interest
4	Related Appeals and Interferences
5	Status of Claims
6	Status of Amendments
7	Summary of Claimed Subject Matter
22	Grounds of Rejection to Be Reviewed on Appeal
23	Argument
31	Claims Appendix
45	Evidence Appendix
46	Related Proceedings Appendix

Real Party in Interest

The real party in interest is Pipeline Financial Group, Inc., of New York, New York.

Related Appeals and Interferences

There are no other prior or pending appeals, interferences, or judicial proceedings known to appellant, appellant's legal representatives, or assignee that may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Fifty-five claims (claims 1-55) were filed with this application. Subsequently, new claims 56-81 were added and claims 2, 7, 8, 16, 21, 22, 33, 34, 42, 43, 57-59, and 63-72 were canceled. Claims 1, 3-6, 9-15, 17-20, 23-32, 35-41, 44-56, 60-62, and 73-81 are now pending and stand rejected. The rejections of claims 1, 3-6, 9-15, 17-20, 23-32, 35-41, 44-56, 60-62, and 73-81 are being appealed.

Status of Amendments

No amendments were filed after the final rejections entered in the Office Action mailed February 14, 2007 and before this Appeal Brief.

Summary of Claimed Subject Matter

Preferred embodiments of the subject invention overcome the limitations of known trading interest targeting and execution systems by (1) enabling market participants to limit targeting of trading interests to only those other market participants likely to have a significant contra-interest; (2) enabling market participants to ensure that other market participants' disseminated trading interests are legitimate; and (3) enabling auctions among trading interests targeted and validated in this manner. Software of a preferred embodiment identifies likely contra-interests by analyzing information from various sources regarding certified trading interests. Preferred embodiments that route and otherwise manage orders based on trading interest information are also described.

Claim 1 is directed to a method of managing securities market information, comprising the steps of: electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security; electronically storing said received data including confidential trading interest information of securities market participants; electronically receiving information from a first securities market participant's computer; electronically storing said information received from said first securities market participant's computer; producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade, and likely to use said information received from said first

securities market participant's computer in a manner that would affect the price or availability of said security; and electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer; wherein said first securities market participant's computer does not receive said confidential trading interest information of said securities market participants and does not receive information about size or composition of said targeted dissemination list (page 3, lines 21-31; page 4, lines 1-6).

Claim 3 is directed to the method of claim 1, wherein said confidential trading interest information comprises certified trading interest information. (page 1, lines 11-14; page 5, lines 1 – 4; page 5 lines 8 – 9; FIG. 1. item 10).

Claim 4 is directed to the method of claim 1 further comprising the step of certifying said confidential trading interest (page 5, lines 1 – 3; FIG. 1 items 10 and 40).

Claim 5 is directed to the method of claim 1 wherein said information received from said first securities market participant's computer includes specific dissemination parameters (page 5, lines 6 – 7 and lines 28 – 29; page 8, lines 5 – 8).

Claim 6 is directed to the method of claim 5 wherein said specific dissemination parameters include certified trading interest requirements (page 6, lines 7 – 11; page 8, lines 9 – 19).

Claim 9 is directed to the method of claim 1 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings (page 5, lines 8 – 9 and 29 – 31; page 6, lines 1 – 4).

Claim 10 is directed to the method of claim 1. Claim 10 comprises:

electronically receiving data from securities market participants on said targeted dissemination list (page 9, lines 29 – 30, FIG. 4, 410);

electronically storing said received data from securities market participants on said targeted dissemination list (page 10, line 15, FIG. 4, 420);

electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list (page 12, lines 26 – 27, FIG. 4, 450).

Claim 11 is directed to the method of claim 10. Claim 11 comprises the step of electronically transmitting information based on said stored data received from securities market participants on said targeted dissemination list to one or more other securities market participants (page 12, lines 28 – 31, FIG. 4, 460).

Claim 12 is directed to the method of claim 10 wherein said information transmitted back to the first securities market participant's computer includes an interest in negotiation (page 12, line 31; page 13, lines 1 – 3).

Claim 13 is directed to the method of claim 3. Claim 13 comprises the steps of electronically receiving data from securities market participants on said targeted dissemination list (page 9, lines 29 – 30, FIG. 4, 410);

electronically storing said received data from securities market participants on said targeted dissemination list (page 10, line 15, FIG. 4, 420);

electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list (page 12, lines 26 – 27, FIG. 4, 450).

Claim 14 is directed to the method of claim 13 wherein said information electronically transmitted back to the first securities market participant's computer comprises an order (page 13, lines 7 – 9).

Claim 15 is directed to a computer program comprising: software for electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security; software for electronically storing said received data including confidential trading interest information of securities market participants; software for electronically receiving information from a first securities market participant's computer; software for electronically storing said information received from said first securities market participant's computer; software for producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade, and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security; and software for electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer; wherein said first securities market participant's computer does not receive said confidential trading interest information of said securities market participants and does not receive information about size or composition of said targeted dissemination list (page 3, lines 21-31; page 4, lines 1-6).

Claim 17 is directed to the program of claim 15, wherein said confidential trading interest information comprises certified trading interest information. (page 1, lines 11-14; page 5, lines 1 – 4; page 5 lines 8 – 9; FIG. 1. item 10).

Claim 18 is directed to the program of claim 15 further comprising the step of certifying said confidential trading interest (page 5, lines 1 – 3; FIG. 1 items 10 and 40).

Claim 19 is directed to the program of claim 15 wherein said information received from said first securities market participant's computer includes specific dissemination parameters (page 5, lines 6 – 7 and lines 28 – 29; page 8, lines 5 – 8).

Claim 20 is directed to the program of claim 19 wherein said specific dissemination parameters include certified trading interest requirements (page 6, lines 7 – 11; page 8, lines 9 – 19).

Claim 23 is directed to the program of claim 15 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings (page 5, lines 8 – 9 and 29 – 31; page 6, lines 1 – 4).

Claim 24 is directed to the program of claim 15. Claim 24 comprises software for:
electronically receiving data from securities market participants on said targeted dissemination list (page 9, lines 29 – 30, FIG. 4, 410);

electronically storing said received data from securities market participants on said targeted dissemination list (page 10, line 15, FIG. 4, 420);

electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list (page 12, lines 26 – 27, FIG. 4, 450).

Claim 25 is directed to the program of claim 24. Claim 25 comprises the step of electronically transmitting information based on said stored data received from securities market participants on said targeted dissemination list to one or more other securities market participants (page 12, lines 28 – 31, FIG. 4, 460).

Claim 26 is directed to the program of claim 24 wherein said information transmitted back to the first securities market participant's computer includes an interest in negotiation (page 12, line 31; page 13, lines 1 – 3).

Claim 27 is directed to the program of claim 24. Claim 27 comprises the software for electronically receiving data from securities market participants on said targeted dissemination list (page 9, lines 29 – 30, FIG. 4, 410);

electronically storing said received data from securities market participants on said targeted dissemination list (page 10, line 15, FIG. 4, 420);

electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list (page 12, lines 26 – 27, FIG. 4, 450).

Claim 28 is directed to the program of claim 27 wherein said information electronically transmitted back to the first securities market participant's computer comprises an order (page 13, lines 7 – 9).

Claim 29 is directed to a method of effecting a targeted auction comprising: electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security; electronically storing said received data including

confidential trading interest information of securities market participants; electronically receiving information from a first securities market participant's computer; electronically storing said information received from said first securities market participant's computer; producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade, and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security; electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer; electronically receiving subsequent orders from securities market participants in response to said transmitted data; conducting an electronic auction among orders including said orders received in response to said transmitted data; and electronically transmitting the status of orders to the respective securities market participants who initiated them (page 3, lines 21-31; page 4, lines 1-6; page 10, lines 14 and 30 - 31, FIG. 4, 420; page 12, lines 6 - 7 and 26 - 27, FIG. 4, 430 and 450).

Claim 30 is directed to the method of claim 29 wherein said information from said first securities market participant's computer includes auction parameters (page 7, lines 15 - 16; FIG. 3, 310; page 10, lines 14 - 17).

Claim 31 is directed to the method of claim 29 wherein said information received from said first securities market participant's computer specific dissemination parameters (page 5, lines 6 - 7 and lines 28 - 29; page 8, lines 5 - 8).

Claim 32 is directed to the method of claim 31 wherein said specific dissemination parameters include certified trading interest requirements (page 6, lines 7 – 11; page 8, lines 9 – 19).

Claim 35 is directed to the method of claim 29 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings (page 5, lines 8 – 9 and 29 – 31; page 6, lines 1 – 4).

Claim 36 is directed to the method of claim 29 wherein rules governing said electronic auction grant to said first order execution priority over said subsequent orders (page 10, lines 30 – 31, page 11, lines 1 – 9).

Claim 37 is directed to the method of claim 29 wherein rules governing said electronic auction prevent the matching of said subsequent orders and an order other than the said first order until said first order is canceled or filled (page 11 lines 29 – 31; page 12 lines 1 – 2).

Claim 38 is directed to a computer program, stored in a computer memory, for effecting a targeted auction comprising: software for electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security; software for electronically storing said received data including confidential trading interest information of securities market participants; software for electronically receiving information from a first securities market participant's computer; software for electronically storing said information received from said first securities market participant's computer; software for producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said

first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade, and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security; software for electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer; software for electronically receiving subsequent orders from securities market participants in response to said transmitted data; software for conducting an electronic auction among orders including said orders received in response to said transmitted data; and software for electronically transmitting the status of orders to the respective securities market participants who initiated them (page 3, lines 21-31; page 4, lines 1-6; page 10, lines 14 and 30 - 31, FIG. 4, 420; page 12, lines 6 - 7 and 26 - 27, FIG. 4, 430 and 450).

Claim 39 is directed to the program of claim 38 wherein said information from said first securities market participant's computer includes auction parameters (page 7, lines 15 - 16; FIG. 3, 310; page 10, lines 14 - 17).

Claim 40 is directed to the program of claim 38 wherein said information received from said first securities market participant's computer specific dissemination parameters (page 5, lines 6 - 7 and lines 28 - 29; page 8, lines 5 - 8).

Claim 41 is directed to the program of claim 40 wherein said specific dissemination parameters include certified trading interest requirements (page 6, lines 7 - 11; page 8, lines 9 - 19).

Claim 44 is directed to the program of claim 38 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings (page 5, lines 8 – 9 and 29 – 31; page 6, lines 1 – 4).

Claim 45 is directed to the program of claim 38 wherein rules governing said electronic auction grant to said first order execution priority over said subsequent orders (page 10, lines 30 – 31, page 11, lines 1 – 9).

Claim 46 is directed to the program of claim 38 wherein rules governing said electronic auction prevent the matching of said subsequent orders and an order other than the said first order until said first order is canceled or filled (page 11 lines 29 – 31; page 12 lines 1 – 2).

Claim 47 is directed to a method of evaluating a securities market participant's trading activities, comprising the steps of: electronically receiving data regarding a first securities market participant, wherein said data comprises certified trading activity information and information describing numbers of shares of a specified security bought and sold by said first securities market participant during a specified time period; electronically storing said received data regarding said first securities market participant; producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period; electronically storing said received data regarding said first securities market participant; producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during

said specified time period from number of said shares purchased during said specified time period; electronically storing said measure; electronically receiving a request from said first securities market participant to have a report transmitted to a second securities market participant, wherein said report comprises said measure; electronically storing said received request; and electronically transmitting said requested report to said second securities market participant (page 5, lines 1 – 3, 8 – 9, and 28 – 31; page 6, lines 1 – 4; page 7, lines 15 – 16 and 25 – 26; page 14, lines 5 – 9; page 15, lines 1 – 12).

Claim 48 is directed to the method of claim 47 wherein said standard is based at least in part on how accurate said non-certified trading information disseminated by said securities market participant has been (page 15, lines 2 – 8).

Claim 49 is directed to the method of claim 47 wherein said standard is based at least in part on compliance with trading restraints agreed to by said securities market participant, wherein said trading restraints comprise one or more agreements, agreed to before a specific trade occurred, specifying that the securities market participant would not trade in that security for the remainder of the day on which said specified trade occurred (page 15, lines 9 – 13).

Claim 50 is directed to the method of claim 47 wherein said standard is based at least in part on system-defined inappropriate trading behavior known to affect price or availability of securities (page 15, lines 16-18 and 22).

Claim 51 is directed to a computer program, stored in a computer memory, for evaluating a securities market participant's trading activities, comprising the steps of: software for electronically receiving data regarding a first securities market participant, wherein said data comprises certified trading activity information and information describing numbers of shares of a specified security bought and sold by said first securities market participant during a specified

time period; electronically storing said received data regarding said first securities market participant; producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period; software for electronically storing said received data regarding said first securities market participant; software for producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period; software for electronically storing said measure; software for electronically receiving a request from said first securities market participant to have a report transmitted to a second securities market participant, wherein said report comprises said measure; software for electronically storing said received request; and software for electronically transmitting said requested report to said second securities market participant (page 5, lines 1 – 3, 8 – 9, and 28 – 31; page 6, lines 1 – 4; page 7, lines 15 – 16 and 25 – 26; page 14, lines 5 – 9; page 15, lines 1 – 12).

Claim 52 is directed to the method of claim 51 wherein said standard is based at least in part on how accurate said non-certified trading information disseminated by said securities market participant has been (page 15, lines 2 – 8).

Claim 53 is directed to the method of claim 51 wherein said standard is based at least in part on compliance with trading restraints agreed to by said securities market participant, wherein said trading restraints comprise one or more agreements, agreed to before a specific

trade occurred, specifying that the securities market participant would not trade in that security for the remainder of the day on which said specified trade occurred (page 15, lines 9 – 13).

Claim 54 is directed to the method of claim 51 wherein said standard is based at least in part on system-defined inappropriate trading behavior known to affect price or availability of securities (page 15, lines 16-18 and 22).

Claim 55 comprises a method of managing securities market information. The method comprises the steps of: (1) enabling a first securities market participant to target dissemination of trading interests to only those other securities market participants likely to have a significant contra-interest, wherein said enabling comprises, for each order placed by said first securities market participant, creating a targeted dissemination list and ensuring that securities market participants not listed on said targeted dissemination list receive no information regarding said order; (2) enabling securities market participants to ensure that other securities market participants' disseminated trading interests are validated as legitimate; and (3) enabling auctions among trading interests targeted and validated as in steps (1) and (2) (page 7, lines 1 – 8 and lines 20 – 24; FIG. 2, 210, 220 and 230; page 9, lines 27 – 28, FIG. 4).

Claim 56 is directed to the method of claim 1, wherein said confidential trading interest information of securities market participants comprises information regarding positions held in securities, securities trades executed, and active securities orders (page 5, lines 1 – 8 and 29 – 31; page 6, lines 1 – 4; page 8, lines 23 – 24).

Claim 60 is directed to the method of claim 1, wherein said information received from a first securities market participant's computer comprises numbers of shares of a specified security bought and sold by said first securities market participant during a specified time period (page 15, lines 2 – 8).

Claim 61 is directed to the method of claim 60, wherein said confidential information is provided with the understanding that said information will not be provided to third parties, said confidential information is indeed not provided to said parties, including other market participants, and said first securities market participant is provided with verification that said confidential information has not been shared with third parties (page 5, lines 14 – 18).

Claim 62 is directed to the method of claim 60, wherein said confidential information is provided with the understanding that said first securities market participant will be provided with confidential trading interests of other securities market participants (page 5, lines 12 – 14).

Claim 73 is directed to the method of claim 1 wherein said targeted dissemination list comprises likely contra parties for said confidential trading interest (page 8, lines 5 – 7).

Claim 74 is directed to the method of claim 1 wherein said targeted dissemination list excludes contra parties likely to misuse knowledge of said confidential trading interest (page 8, lines 29 – 31; page 9, lines 1 – 3).

Claim 75 is directed to the method of claim 1 wherein said contra parties likely to misuse knowledge of said confidential trading interest comprise parties likely to front run (page 9, lines 1 – 3).

Claim 76 is directed to the method of claim 1 wherein said contra parties likely to misuse knowledge of said confidential trading interest comprise parties likely to peg game (page 9, lines 1 – 3).

Claim 77 is directed to the method of claim 50, wherein said inappropriate trading behavior comprises front running or peg gaming (page 6, lines 12 – 13; page 9, lines 1 – 3).

Claim 78 is directed to the method of claim 50, wherein said inappropriate trading behavior comprises trade breaks (page 8, lines 24 – 26).

Claim 79 is directed to the method of claim 47, wherein said received data regarding said first securities market participant comprises confidential information provided by said first securities market participant in order to receive better prices on future trades or more order flow (page 14 lines, 29 – 31; page 15, line 1).

Claim 80 is directed to the method of claim 47, wherein said measure is based at least in part on percent divergence between disclosed and actual trading activity of said first securities market participant (page 15, lines 2 – 4).

Claim 81 is directed to the method of claim 47, wherein said measure is based at least in part on percent divergence between stated trading cap and actual trading activity of said first securities market participant (page 15, lines 2 – 4).

Grounds of Rejection to Be Reviewed On Appeal

(I) Whether claims 1, 3-6, 9-15, 17-20, 23-32, 35-41, 44-46, and 73-76 are properly rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. No. 6,421,653, to May (“May”), in view of U.S. Pat. No. 5,717,989, to Tozzoli et al. (“Tozzoli”) and the Examiner’s assertions that certain claim limitations are “well known in the art.”

(II) Whether claims 47-56, 60-62, and 77-81 are properly rejected under 35 U.S.C. § 103(a) as unpatentable over May and the Examiner’s assertions that certain claim limitations are “well known in the art.”

Argument

The Office Action being appealed (Office Action mailed February 14, 2007, hereinafter “Office Action”) rejected all pending claims over combinations of May, Tozzoli and the Examiner’s assertions of what is well known in the art. These rejections are not supported, and should be reversed.

(I.) Claims 1, 3-6, 9-15, 17-20, 23-32, 35-41, 44-46, and 73-76 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over May in view of Tozzoli and the Examiner’s assertion that claim limitations are “well known in the art”.

Neither reference teaches market participants being identified as *both* unlikely to take the contra side of an order *and* likely to use the information received from the first securities market participant’s computer in a manner that would affect the price or availability of a security being excluded from a targeted dissemination list.

May discloses an invention that uses credit information to color quotes differently depending on whether or not a potential trade would pass credit validation. May teaches screening potential counterparties according to their credit limits.

Tozzoli discloses a system for trading goods and services – not securities. In light of the volumes of arcane regulations that govern securities trading, one skilled in the art of securities trading would be unlikely to consult a reference, such as Tozzoli, that fails to consider those

regulations. In any event, the securities trading problems, such a front running¹ and peg gaming,² with which the present invention is concerned, are not contemplated by Tozzoli.

Claim 1 requires market participants identified as *both* unlikely to take the contra side of an order *and* likely to use the information received from the first securities market participant's computer in a manner that would affect the price or availability of a security to be excluded from a targeted dissemination list. This limitation is not taught by May (as conceded in the Office Action) or by Tozzoli. Indeed, neither May nor Tozzoli mentions anything about market participants likely to use information received from another securities market participant in a manner that would affect the price or availability of a security.

The Office Action asserts (see p. 4) that Tozzoli teaches this limitation at col. 7, lines 10-25. This is incorrect. At col. 7, lines 10-25, Tozzoli merely mentions that a buyer's offer may include hidden terms not known to prospective sellers but known to the system. Tozzoli says nothing about the above limitation. Tozzoli has no teaching regarding identifying participants likely to use the information received from a first securities market participant's computer in a manner that would affect the price or availability of a security, as required by claim 1.

Since neither May nor Tozzoli teaches or suggests the limitation of identifying participants likely to use the information received from a first securities market participant's

¹ Front running is the unethical practice of buying a security in anticipation of price movement resulting from a large revealed order. For example, a broker might buy himself 5000 shares in a stock just before his brokerage buys a block of 1,000,000 shares, the broker anticipating that the price of the shares will rise once the brokerage's buy order hits the market.

² Peg gaming is possible when an auction sets the execution price to be the market midpoint at a specific time. An auction participant with a large buy order might sell actively in the market to pull the midpoint price down.

computer in a manner that would affect the price or availability of a security, the rejection of claim 1 over those references is improper and should be withdrawn.

(A) The Office Action improperly characterizes missing limitations as being “well known in the art.”

Neither May nor Tozzoli teaches the limitation of having a first securities market participant’s computer not receive said confidential trading interest information of other securities market participants and not receiving information about size or composition of a targeted dissemination list. The Office Action implicitly concedes that neither May nor Tozzoli teaches this limitation, and asserts without foundation that the limitation is “well known in the art.” This is improper. See, for example, MPEP 2144.03:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

Clearly the limitation of having a first securities market participant’s computer not receive said confidential trading interest information of other securities market participants and not receiving information about size or composition of a targeted dissemination list is a substantive and highly technical limitation. It is precisely the sort of limitation that examiners have been prohibited from asserting as “well known in the art” without providing supporting documentary evidence.

Moreover, even if that limitation were found to be well known in the present art, that would not end the inquiry. The relevant question is whether the limitation was known at the time of the invention, or at least at the time the application was filed. The present application has

been pending for seven (7) years (filed June 1, 2000). The Patent Office cannot simply ignore the applicants' filing date and rely on what may or may not be known in the art today.

For at least the above reasons, the rejection of claim 1 is improper, and should be withdrawn.

Claims 3-6, 9-14, and 73-76 all depend from claim 1 and share the above limitation. Claim 15 is directed to software for performing the steps of claim 1, and claims 17-20 and 23-28 depend from claim 15. Consequently, the rejections of those claims are likewise improper and should be withdrawn.

(B) Claim 29 is not properly considered in the Office Action, and thus is improperly rejected.

Claim 29 is not rejected on its pending form. The Office Action ignores limitations added in the September 2006 amendments, and improperly rejects claim 29 using the same language used in a previous office action. For example, claim 29 presently requires "electronically receiving over a computer network data including *confidential trading interest information* of securities market participants," but the Office Action quotes the previous version of the claim: "electronically receiving over a computer network data including *confidential information* regarding securities market participants." Thus, the Office Action includes no assertion that the confidential trading interest limitation can be found in the prior art. Thus, the rejection of claim 29 is unsupported, is improper, and should be withdrawn.

Claims 30-32 and 35-37 depend from claim 29, and thus also have been improperly rejected. Claim 38-41 and 44-46 are directed to software for performing the steps of claims 29-32 and 35-37, and thus are likewise improperly rejected.

(II.) Claims 47-56, 60-62, and 77-81 are improperly rejected as unpatentable over May in view of improperly asserted non-cited prior art

Claims 47-56, 60-62 and 77-81 were rejected as unpatentable by May.

Claim 47 recites that the number of shares of a specified security traded by a participant during a specified time period is taken into account, and a measure of that participant's trading activity is produced. May teaches nothing about measuring a participant's trading activity.

After the applicants pointed out that May lacked a number of limitations of the claims, the Examiner simply asserted that those missing (highly detailed and technical) limitations were "well known in the art of trading."

Specifically, the Office Action states:

May does not disclose information describing numbers of shares of a specified security bought[t] and sold by said first securities market participant during a specified time period; wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period. However, such features are well known in the art of trading.

This kind of assertion – that prior art not found by the Examiner is "well known"- is equivalent to a taking of Official Notice of prior art that is not cited. As explained herein, this approach to examination is contrary to both the spirit and letter of the patent laws and regulations. To permit such rejections invites and condones flagrant abuses of the examination process.

Indeed:

Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.

[A] ssertions of technical facts . . . or specific knowledge in the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support.

See MPEP § 2144.03(A) (emphasis supplied).

Moreover, “it is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.” See MPEP 2144.03(A), third paragraph. In this case, claim 47 was rejected primarily by asserting that the “features are well known in the art of trading.”

Applicants concede that MPEP §2144.03, the section addressing Official Notice, contains the isolated statement: “To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” However, Applicants respectfully submit that this statement, taken alone, is misleading, and must be read in the context of the other language in MPEP § 2144.03.

The only fair interpretation of MPEP § 2144.03(C) is as follows: if an examiner takes Official Notice that a teaching was in the prior art, and the applicant demands a reference for that teaching, the examiner must either produce a prior art reference with that teaching or withdraw the taking of Official Notice.³ In other words, simply requesting documentary support for a taking of Official Notice is sufficient to traverse that taking, and nothing more is required in order to prevent the “facts” being Officially Noticed from being admitted prior art.

³ Alternatively, if the examiner is relying on personal knowledge to support his taking of Official Notice, he “must provide an affidavit or declaration setting forth specific factual statements and explanation to support” that taking of Official Notice.” MPEP § 2144.03(C).

In the present case, the Examiner rejected claims 47 and 77-81 based on un-cited prior art for the first time in a Final Office Action, so applicants had no opportunity to request the Examiner to produce a supporting prior art reference. Such a request was made in response to an earlier rejection of claims 73-76 that was based on the Examiner's assertion that excluding contra parties likely to misuse knowledge of confidential trading interests (especially parties likely to front run or peg game) is well known in the art. However, the examiner failed to respond with any prior art reference, and, instead of withdrawing the rejection, as required by the MPEP, the Examiner simply repeated the same language in the final Office Action, and did not address applicants request for supporting references.

Simple fairness dictates that applicants should not be required to explain why certain features are not considered to be common knowledge in order properly traverse a taking of Official Notice. Such a rule would allow an examiner to reject claims based on "prior art" that does not exist, and such rejections would be maintained unless applicants can explain why that prior art does not exist. This completely removes the examiner's burden of proof and shifts it to the applicants.

Claims 48-50 and 77-81 all depend from claim 47 and share the same limitations. Claim 51 is directed to software for performing the steps of claim 47 and claims 52-54 depend from claim 51. Consequently, the rejections of those claims are likewise improper and should be withdrawn.

(A) Claim 56 and 60-62 are not properly considered in the Office Action, and thus are improperly rejected.

Claims 56 and 60-62 stand rejected in the Office Action as unpatentable over May alone. However, claims 56 and 60-62 depend from claim 1. Since the Office Action does not assert that

claim 1 is unpatentable over May alone, the rejection of dependent claims 56 and 60-62 as unpatentable over May is improper and should be withdrawn.

(B) Claim 55 is improperly rejected over May.

As previously explained, claim 55 includes a targeted dissemination list limitation, which the Office Action concedes is not taught by May. However, the Examiner again, improperly asserts that such a feature would have been obvious to one of ordinary skill in the art. Applicants traverse Examiner's improper use of un-cited prior art as discussed herein with reference to claims 1 and 47. Thus, the rejection of claim 55 over May should be withdrawn.

It is therefore respectfully requested that the Board of Patent Appeals and Interferences reverse the rejection of these claims.

Please charge all required fees to Deposit Account No. 50-0310.

Respectfully submitted,

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Claims Appendix

1. A method of managing securities market information, comprising the steps of:
 - electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security;
 - electronically storing said received data including confidential trading interest information of securities market participants;
 - electronically receiving information from a first securities market participant's computer;
 - electronically storing said information received from said first securities market participant's computer;
 - producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security; and
 - electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer, wherein said first securities market participant's computer does not receive said confidential trading interest information of said securities market participants and does not receive information about size or composition of said targeted dissemination list.

2. (Canceled)
3. The method of claim 1 wherein said confidential trading interest information comprises certified trading interest information.
4. The method of claim 1 further comprising the step of certifying said confidential trading interest.
5. The method of claim 1 wherein said information received from said first securities market participant's computer includes specific dissemination parameters.
6. The method of claim 5 wherein said specific dissemination parameters include certified trading interest requirements.
7. (Canceled)
8. (Canceled)
9. The method of claim 1 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings.
10. The method of claim 1 further comprising the steps of:
 - electronically receiving data from securities market participants on said targeted dissemination list;
 - electronically storing said received data from securities market participants on said targeted dissemination list; and
 - electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list.

11. The method of claim 10 further comprising the step of electronically transmitting information based on said stored data received from securities market participants on said targeted dissemination list to one or more other securities market participants.
12. The method of claim 10 wherein said information transmitted back to the first securities market participant's computer includes an interest in negotiation.
13. The method of claim 3 further comprising the steps of:
- electronically receiving data from securities market participants on said targeted dissemination list;
 - electronically storing said received data from securities market participants on said targeted dissemination list; and electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list.
14. The method of claim 13, wherein said information electronically transmitted back to the first securities market participant's computer comprises an order.
15. A computer program, stored in a computer memory, for managing securities market information comprising:
- software for electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security;
 - software for electronically storing said received data including confidential trading interest information of securities market participants;

software for electronically receiving information from a first securities market participant's computer;

software for electronically storing said information received from said first securities market participant's computer;

software for producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security; and software for electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer wherein said first securities market participant's computer does not receive said confidential trading interest information of said securities market participants and does not receive information about size or composition of said targeted dissemination list.

16. (Canceled)

17. The program of claim 15 wherein said confidential trading interest information comprises certified trading interest information.

18. The program of claim 15 further comprising software for certifying said confidential trading interest.

19. The program of claim 15 wherein said information received from said first securities market participant's computer includes specific dissemination parameters.

20. The program of claim 19 wherein said specific dissemination parameters include certified trading interest requirements.

21. (Canceled)

22. (Canceled)

23. The program of claim 15 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings.

24. The program of claim 15 further comprising software for:

electronically receiving data from securities market participants on said targeted dissemination list;

electronically storing said received data from securities market participants on said targeted dissemination list; and electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list.

25. The program of claim 24 further comprising software for electronically transmitting information based on said stored data received from securities market participants on said targeted dissemination list to one or more other securities market participants.

26. The program of claim 24 wherein said information transmitted back to the first securities market participant's computer includes an interest in negotiation.

27. The program of claim 17 further comprising software for:

electronically receiving data from securities market participants on said targeted dissemination list;

electronically storing said received data from securities market participants on said targeted dissemination list; and

electronically transmitting information back to the first securities market participant's computer based on said stored data received from securities market participants on said targeted dissemination list.

28. The program of claim 27, wherein said information electronically transmitted back to the first securities market participant's computer comprises an order.

29. A method of effecting a targeted auction, comprising the steps of:

electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security;

electronically storing said received data including confidential trading interest information of securities market participants;

electronically receiving information from a first securities market participant's computer;
electronically storing said information received from said first securities market participant's computer;

producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security;

electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer;

electronically receiving subsequent orders from securities market participants in response to said transmitted data;

conducting an electronic auction among orders including said orders received in response to said transmitted data; and

electronically transmitting the status of orders to the respective securities market participants who initiated them.

30. The method of claim 29 wherein said information from said first securities market participant's computer includes auction parameters.

31. The method of claim 29 wherein said information received from said first securities market participant's computer includes specific dissemination parameters.

32. The method of claim 31 wherein said specific dissemination parameters include certified trading interest requirements.

33. (Canceled)

34. (Canceled)

35. The method of claim 29 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings.

36. The method of claim 29 wherein rules governing said electronic auction grant to said first order execution priority over said subsequent orders.

37. The method of claim 29 wherein rules governing said electronic auction prevent the matching of said subsequent orders and an order other than said first order until said first order is canceled or filled.

38. A computer program, stored in a computer memory, for effecting a targeted auction, comprising:

software for electronically receiving over a computer network data including confidential trading interest information of securities market participants, wherein said data is not disseminated to any market participant upon receipt or at any future time and comprises data whose dissemination could affect the price or availability of a security;

software for electronically storing said received data including confidential trading interest information of securities market participants;

software for electronically receiving information from a first securities market participant's computer;

software for electronically storing said information received from said first securities market participant's computer;

software for producing a targeted dissemination list of securities market participants based on said confidential trading interest information of securities market participants and said information received from said first securities market participant's computer, wherein said targeted dissemination list excludes one or more market participants identified as unlikely to take the contra side to a specified trade and likely to use said information received from said first securities market participant's computer in a manner that would affect the price or availability of said security;

software for electronically transmitting to the securities market participants on said targeted dissemination list data based on said information received from said first securities market participant's computer;

software for electronically receiving subsequent orders from securities market participants in response to said transmitted data;

software for conducting an electronic auction among orders including said orders received in response to said transmitted data; and

software for electronically transmitting the status of orders to the respective securities market participants who initiated them.

39. The program of claim 38 wherein said information from said first securities market participant's computer includes auction parameters.

40. The program of claim 38 wherein said information received from said first securities market participant's computer includes specific dissemination parameters.

41. The program of claim 40 wherein said specific dissemination parameters include certified trading interest requirements.

42. (Canceled)

43. (Canceled)

44. The program of claim 38 wherein said data including confidential trading interest information of securities market participants includes information regarding investment holdings.

45. The program of claim 38 wherein rules governing said electronic auction grant to said first order execution priority over said subsequent orders.

46. The program of claim 38 wherein rules governing said electronic auction prevent the matching of said subsequent orders and an order other than said first order until said first order is canceled or filled.

47. A method of evaluating a securities market participant's trading activities, comprising the steps of:

electronically receiving data regarding a first securities market participant, wherein said data comprises certified trading activity information and information describing numbers of shares of a specified security bought and sold by said first securities market participant during a specified time period;

electronically storing said received data regarding said first securities market participant;
producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period;

electronically storing said measure;

electronically receiving a request from said first securities market participant to have a report transmitted to a second securities market participant, wherein said report comprises said measure;

electronically storing said received request; and electronically transmitting said requested report to said second securities market participant.

48. The method of claim 47 wherein said standard is based at least in part on how accurate said non-certified trading information disseminated by said securities market participant has been.

49. The method of claim 47 wherein said standard is based at least in part on compliance with trading restraints agreed to by said securities market participant, wherein said trading restraints comprise one or more agreements, agreed to before a specified trade occurred, specifying that the securities market participant would not trade in that security for the remainder of the day on which said specified trade occurred.

50. The method of claim 47 wherein said standard is based at least in part on system-defined inappropriate trading behavior known to affect price or availability of securities.

51. A computer program, stored in a computer memory, for evaluating a securities market participant's trading activities, comprising:

software for electronically receiving data regarding a first securities market participant, wherein said data comprises certified trading activity information and information describing numbers of shares of a specified security bought and sold by said first securities market participant during a specified time period;

software for electronically storing said received data regarding said first securities market participant;

software for producing a measure of said first securities market participant's trading activity with respect to a standard, wherein said measure is based at least in part on a net change in said first securities market participant's position as determined by subtracting number of said shares of said specified security sold during said specified time period from number of said shares purchased during said specified time period;

software for electronically storing said measure;

software for electronically receiving a request from said first securities market participant to have a report transmitted to a second securities market participant, wherein said report comprises said measure;

software for electronically storing said received request; and

software for electronically transmitting said requested report to said second securities market participant.

52. The program of claim 51 wherein said standard is based at least in part on how accurate said non-certified trading information disseminated by said securities market participant has been.

53. The program of claim 51 wherein said standard is based at least in part on compliance with trading restraints agreed to by said securities market participant, wherein said trading restraints comprise one or more agreements, agreed to before a specified trade occurred, specifying that the securities market participant would not trade in that security for the remainder of the day on which said specified trade occurred.

54. The program of claim 51 wherein said standard is based at least in part on system-defined inappropriate trading behavior known to affect price or availability of securities.

55. A method of managing securities market information, comprising the steps of:
enabling a first securities market participant to target dissemination of trading interests to only those other securities market participants likely to have a significant contra-interest, wherein said enabling comprises, for each order placed by said first securities market participant, creating a targeted dissemination list and ensuring that securities market participants not listed on said targeted dissemination list from receive no information regarding said order;

enabling securities market participants to ensure that other securities market participants' disseminated trading interests are validated as legitimate; and

enabling auctions among trading interests targeted and validated as in steps (1) and (2).

56. The method of claim 1, wherein said confidential trading interest information of securities market participants comprises information regarding positions held in securities, securities trades executed, and active securities orders.

57. (Canceled).

58. (Canceled).

59. (Canceled).

60. The method of claim 1, wherein said information received from a first securities market participant's computer comprises numbers of shares of a specified security bought and sold by said first securities market participant during a specified time period.

61. The method of claim 60, wherein said confidential information is provided with the understanding that said information will not be provided to third parties, said confidential information is indeed not provided to said parties, including other market participants, and said first securities market participant is provided with verification that said confidential information has not been shared with third parties.

62. The method of claim 60, wherein said confidential information is provided with the understanding that said first securities market participant will be provided with confidential trading interests of other securities market participants.

63-72. (Canceled)

73. The method of claim 1 wherein said targeted dissemination list comprises likely contra parties for said confidential trading interest.

74. The method of claim 1 wherein said targeted dissemination list excludes contra parties likely to misuse knowledge of said confidential trading interest.
75. The method of claim 74 wherein said contra parties likely to misuse knowledge of said confidential trading interest comprise parties likely to front run.
76. The method of claim 74 wherein said contra parties likely to misuse knowledge of said confidential trading interest comprise parties likely to peg game.
77. The method of claim 50, wherein said inappropriate trading behavior comprises front running or peg gaming.
78. The method of claim 50, wherein said inappropriate trading behavior comprises trade breaks.
79. The method of claim 47, wherein said received data regarding said first securities market participant comprises confidential information provided by said first securities market participant in order to receive better prices on future trades or more order flow.
80. The method of claim 47, wherein said measure is based at least in part on percent divergence between disclosed and actual trading activity of said first securities market participant.
81. The method of claim 47, wherein said measure is based at least in part on percent divergence between stated trading cap and actual trading activity of said first securities market participant.

Evidence Appendix

None.

Related Proceedings Appendix

None.